Supreme Court, U.S.
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No. (1)

10-612

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2010

DANIEL G. ANDERSON, et al.,

Petitioners,

versus

BARACK HUSSEIN OBAMA,
in his official capacity
as President of the United States,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. When the nation watches its President-Elect take a solemn oath (upon the Lincoln Bible) to ". . . **preserve, protect** and **defend** the **Constitution** of the **United States**" and then that same President willfully uses the full force of his leadership to aid and abet the subversion of Article I, Section 7 of the Constitution and ignores protests of that subversion to sign into law that which subverted the Origination Clause of the Nation's Constitution, has the President Abnegated his oath of office?

2. Does the will of a Chief Executive and his party in power (be it Democratic or Republican) trump the Constitution so that a law once passed without a single bipartisan vote can become the law of the land or is that law trumped by failed compliance with Article I, Section 7 of the Constitution?

3. Given that the Origination Clause requires that any revenue-raising measure originate in the House and the instant bill estimated to raise $100 **Billion** in revenue originated in the Senate, can the Administration sustain and enforce it?

4. Did the current Chief Executive breach the 'wall of separation of powers' by usurping the powers of the legislature, becoming in essence the 'chief legislator"?

5. Does the use of a 'shell bill' by the Senate as a vehicle for passing the PPACA H.R. 3590 cure failed compliance with the Origination Clause?

6. Did the Fourth Circuit err or abuse its discretion in summarily dismissing Petitioners' appeal for failure to present a substantial federal question given Petitioners' argument regarding violation of the Origination Clause, i.e., that the Senate violated the Clause by using a 'shell', *non-revenue raising* House bill as a vehicle to originate a Senate revenue-raising measure?

7. Did the Fourth Circuit err or abuse its discretion in summarily dismissing Petitioners' appeal for lack of Article III standing?

8. Did the District Court err or abuse its discretion in denying plaintiffs-petitioners' motion for leave to file a second amended bill of complaint that set forth an Origination Clause challenge to obamacare?

LIST OF ALL PARTIES TO THE PROCEEDING

Plaintiff Daniel G. Anderson is a citizen of Maryland who resides in Chevy Chase, Maryland, and who holds a degree in economics from Yale University, and is a former officer in the U.S. Navy and a veteran of the Korean War.

Plaintiff William Colliton, M.D. is a citizen of Maryland who resides in Bethesda, Maryland, and is currently a Clinical Professor of Obstetrics and Gynecology at George Washington University Medical Center in Washington, D.C.

Plaintiff Richard P. Delaney, M.D. is a citizen of Maryland who resides in Silver Spring, Maryland, and is currently a General Practitioner with an active family practice of over fifty (50) years.

Plaintiff Richard Loria, M.D. is a citizen of Virginia who resides in McLean, Virginia, whose medical specialty is Allergy and Immunology and who currently works as a lecturer to the medical profession.

Plaintiff Lorenzo Marcolin, M.D. is a citizen of Maryland who resides in Potomac, Maryland, and is an orthopedic physician.

Plaintiff Gaetano Molinari, M.D. is a citizen of Maryland who resides in Chevy Chase, Maryland, and is currently a Neurologist and the Chairman Emeritus of the Department of Neurology at George Washington University in Washington, D.C.

Plaintiff James Ronan, M.D. is a citizen of Maryland who resides in Potomac, Maryland, and is a cardiologist and the author of cardiology textbooks that are used in the medical profession.

Plaintiff Edward Sheridan, M.D. is a citizen and resident of Washington, D.C. and a federal taxpayer who is a psychiatrist and the former Chairman of the Department of Psychiatry at Georgetown University.

Plaintiff Edward Soma, M.D. is a citizen of Maryland who resides in Kensington, Maryland, and is a radiologist, the Founding Chairman of the Department of Radiology and Nuclear Medicine of Holy Cross Hospital, and the former Chairman of the Board of the Danny Thomas St. Jude's Children's Hospital in Memphis, Tennessee, having served as a member of its Board for over 40 years.

Plaintiff Ronald Uscinski, M.D. is a citizen of Virginia who resides in Great Falls, Virginia, and is a neurosurgeon and a graduate of the Georgetown University School of Medicine, a Senior Surgeon with the U.S. Public Health Service, and an Assistant Professor in the Department of Neurological Surgery, Georgetown University and George Washington University.

Jennifer R. Boyer (Plaintiff in proposed Second Amended Complaint) is a citizen and resident of Washington, D.C. who is a graduate of the University of Kentucky and has been admitted to the University of Kentucky's medical school.

Defendant Barack Hussein Obama, is the current President of the United States.

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The United States District Court for the District of Maryland issued an oral opinion determining that the original complaint should be dismissed, on March 18, 2010 (A - 8). The District Court, in denying Plaintiffs-Petitioners' motion for leave to file a second amended complaint, issued a written memorandum opinion dated July 27, 2010 (A - 30).

JURISDICTION

The judgment of the Fourth Circuit Court of Appeals dismissing Petitioners' appeal was entered on September 8, 2010 (A - 6). Jurisdiction of this Court to review the judgment of the Fourth Circuit is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Art I, § 2, cl. 1.

U.S. Const Art. I, § 3, cl. 1.

U.S. Const. Art. I, § 7, cl. 1.

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STATEMENT OF THE CASE

"Origination" refers to "origination." Lock, stock, barrel: noun, verb, jot and tittle; every miniscule scrap of the PPACA **ORIGINATED** only in the Senate, and everybody knows it. Should this law stand, the Origination Clause (part of the "Great Compromise of 1787") falls. So falls as well our Constitution. The essential question becomes: Quo vadis America?

This Petition raises fundamental questions of great public importance: (1) whether the PPACA, the health care reform legislation commonly known as "obamacare", was passed in violation of the Origination Clause, rendering the legislation void and unenforceable, and (2) the standing and ability of Petitioners to challenge the PPACA and obtain an injunction against its continued implementation and enforcement, which if not directed to the President himself, may readily be directed to lesser subordinate officials under the President, achieving the same result.

On November 7, 2009, the House of Representatives passed the Affordable Health Care for America Act, H.R. 3962, by a 220-215 vote and forwarded the bill to the Senate for passage. The Senate, casting aside the House bill, failed to take up debate on it and decided to **ORIGINATE ITS OWN** health care reform bill.

In an effort to circumvent the constitutional requirement that all revenue-raising bills **ORIGINATE** in the House, (*see* U.S. Const. Art. I, § 7, cl. 1 (A - 44), the Senate used H.R. 3590, a bill entitled "Service Members Home Ownership Tax Act of 2009." H.R. 3590, § 1 (A - 186) as a shell bill. This bill had been introduced in the House of Representatives by Charles Rangel (D-NY) on

September 17, 2009 and passed by the House on October 8, 2009 by a vote of 416-0. This bill's purpose was to amend the Internal Revenue Code "to modify the first-time home buyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes." H.R. 3590, Preamble (A - 186). H.R. 3590 was a very short, noncontroversial measure**, had nothing to do with health care reform** and did not constitute a revenue-raising bill. Its primary purpose was to provide tax breaks to (, i.e., to *reduce* the taxes imposed on,) members of the uniformed services, the Foreign Service, and the intelligence community. H.R. 3590 did not impose taxes designed to raise revenue beyond off-setting the cost of providing the tax breaks.

Harry Reid and the Senate leadership used H.R. 3590 as a 'shell game' shell bill for the Senate's health care reform measure by completely striking out all of H.R. 3590 after the "enacting clause" and substituting multi-farious and very lengthy amendments collectively known as Senate Amendment 2786 – the infamous 2000+ pages. The revised bill ("the Senate Bill"), by now entitled the Patient Protection and Affordable Care Act ("PPACA") , was introduced on the Senate floor on or about November 19, 2009.

On December 21, 2009, the Senate voted 60 to 40 to cut off debate on the bill. The Administration worked diligently to garner the 60th vote needed to defeat a Republican filibuster of obamacare. The President himself met six times in a nine-day period with Senator Ben Nelson of Nebraska, the Democratic hold out concerned with the liberalization of abortion the bill as drafted would cause. Finally, after the sixth meeting with the President at the White House to which he had been summoned, Ben Nelson became the 60th vote.

NO LESS THAN 20 UNITED STATES SENATORS, whom it is presumed are pretty well connected in the Senate as to what goes on among their membership, signed onto a letter to the Chairman of the Senate Armed Services Committee protesting the abuse of presidential power in threatening to close the Strategic Air Command base (Offutt Air Force Base that employs 10,000 people in Senator Ben Nelson's state) unless he came around to the President's way of thinking and voted with his fellow Democrats. (See copy of letter A-192).

In the District Court below, the President's deposition was noted and interrogatories inquiring into this abuse of executive power were propounded and served upon the President with the filing of the initial Complaint. The President's response brought back memories of the nickname given to General Jackson, who stood his ground during the American Civil War.

In **forced session** on Christmas Eve, the Senate 'passed' obamacare by a vote of 60 to 39, with Senator Ben Nelson voting for the bill. All Senate Democrats and Independents voted for obamacare, while **all** Senate **Republicans** (except Senator Jim Bunning, (R-KY), who did not cast a vote) **voted against it**. This gargantuan piece of social legislation had virtually **NO bipartisan support.** By contrast, previous major pieces of social legislation – Social Security in 1935 and Medicare in the 1965 – passed by substantial bipartisan margins.

The Christmas Eve passage of obamacare gave birth to a mistaken belief by this Administration that they had a 'permit' to dynamite the cathedral of American medicine 200 years in the making, the stones of which have been painstakingly laid one upon another by hand over two centuries.

On January 19, 2010, in a special election held in Massachusetts in which 'obamacare' was ground zero, Scott Brown (R-MA) was elected to the Senate in a stunning upset, ending the Democrats' 60-member, filibuster-proof majority in the Senate. Scott Brown ran on a promise to vote against obamacare. Since the House had passed one health care bill and the Senate had passed its own version which had **originated** in the Senate, a joint House-Senate conference committee would be required to hammer out a compromise bill to be first resubmitted in the House (Origination Clause compliance) and passed by the House and then forwarded to the Senate for approval. Scott Brown would now vote against it, costing the Democrats their filibuster-proof, 60-vote majority.

After the shellacking that the Administration took in Massachusetts on obamacare, the President switched his rhetoric to the economy, and it was presumed even by fellow members of his party who had begun to distance themselves from obamacare that the health care bill was dead, at least for the present session of Congress. A chorus of voices in the Congress said there was a need to start over with a clean sheet of paper – a truthful and realistic assessment necessary to obviate a division of the nation. This was respecting the greater wisdom that "a house divided cannot stand."

The current Chief Executive, however, was more determined than ever to have his way as the people witnessed his **mailed** fist clench the House Democratic leadership into submission in order to **'bully through'** obamacare while disrespecting, ignoring and defying the Origination Clause of the Constitution. At the same time, they amended it with a third bill, the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, 124

Stat. 1029. The House 'passed' the Senate Bill on March 21, 2010, by a vote of 219 to 212, with 34 Democrats and **all 178 Republicans voting against it.** President Obama signed the bill on March 23, 2010, knowing full well that he was signing a bill, the failed compliance of which with Article I, Section 7 of the Constitution was exceeded only by his own failed compliance with his solemn oath of office to "**preserve, protect and defend the Constitution of the United States.**" History teaches that power can become an aphrodisiac causing an individual to seek greater and greater amounts and to believe that he and he alone knows what is best for the people and that his desired ends are nobler than a Constitution of the people over whom he is now in power and that those ends, therefore, should not be fettered by a Constitution.

The Constitution mandates that "all bills for raising revenue **shall originate** the House of Representatives."

The Senate Bill, as introduced on the Senate floor, passed by the Senate, 'rubber-stamped' by the House, and signed by the President, contains numerous new taxes, fees and penalties designed to **RAISE REVENUE** both (1) to offset the cost of the Senate Bill's health care insurance and other reforms and (2) to **reduce the federal deficit** which include:

- **New Medicare Taxes.** Effective January 1, 2013, individuals with an adjusted gross income (AGI) of more than $200,000 a year, and married couples with an AGI of more than $250,000 a year, will (a) have their Medicare Part A (hospital insurance) tax rate increased by 0.9 percent, to 2.35 percent, and (b) pay an entirely new tax of 3.8 percent on unearned income (e.g., interest, dividends). The JCT estimates these new Medicare taxes will bring in

$210 billion between 2013 and 2019. PPACA, § 9015, 124 Stat. 870-72.[1]

• **Tax on Expensive Health Insurance.** Effective January 1, 2018, an excise tax will be levied on insurers of employer-sponsored health plans that cost more than $10,200 annually for individual coverage, or more than $27,500 annually for family coverage. The tax would be 40% of the cost of any plan that exceeds these dollar thresholds. The JCT estimates this tax will bring in around $32 billion in 2018 and 2019. *See* PPACA, § 9001, 124 Stat. 847-53.

• **Fees and Taxes Imposed on Health Care Industries.**

• Drug manufacturers will pay $27 billion in new annual fees (2011 to 2019). PPACA, § 9008, 124 Stat. 859-62.

• Health insurers will pay $60.1 billion in new annual fees (2014 to 2019). PPACA, § 9010, 124 Stat. 865-68.

• Effective January 1, 2013, medical device makers will pay a 2.9% excise tax on the sale of any of their wares, or a total of $20 billion. PPACA, § 9009, 124 Stat. 862-65.

• **Tanning Salon Tax.** Effective July 1, 2010, a tax of 10% began to be levied on indoor tanning services. It is estimated that this tax will net approximately $2.7 billion between 2010 and 2019. PPACA, § 9017, 124 Stat. 872-73.

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1 The full text of this 2,700+-page Act may be found online at http://www.gpo.gov/fdsys/pkg/BILLS-111hr3590ENR/pdf/BILLS-111hr3590ENR.pdf.

• **Tax Penalties Imposed On Employers.** Effective January 1, 2014, a tax penalty of $750 per employee[2] will be imposed on employers with over 50 employees who do not offer health insurance to their full-time workers. PPACA, §§ 1513, 10106, 124 Stat. 253-256, 906-911.

• **Tax Penalties Imposed On Individuals.** Effective January 1, 2014, an annual tax penalty of $95, or up to 1% of income, whichever is greater, on individuals who do not secure health insurance; this will rise to an annual penalty of $695, or 2.5% of income, by 2016. The $695 figure is an individual limit on the annual penalty; families have a limit of $2085.00. PPACA, §§ 1501, 10106, 124 Stat. 242-49, 253-256, 906-911.

Before the Senate passed the Senate Bill, the Congressional Budget Office (CBO) and the JCT, in a letter to Senate Majority Leader Harry Reid, dated December 19, 2009, estimated that the Senate Bill "would yield a net reduction in federal deficits of **$132 BILLION** over the 2010-2019 period".[3] Before the House passed the Senate Bill, the CBO and JCT similarly estimated, in a letter addressed to the Speaker of the House, Nancy Pelosi, dated March 20, 2010, that the bill, by itself, "would yield a net reduction in federal deficits of **$118 BILLION** over the 2010 to 2019 period, of which about $65 billion would be on-budget".[4]

After initiating this action by filing their original Complaint on January 5, 2010, Petitioners moved for leave to file a Second Amended Complaint on March 18, 2010 (A - 65). In Count III of their proposed Second

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2 Increased to a tax penalty of $2000 per employee by the Reconciliation Act.

3 See letter at http://www.cbo.gov/ftpdocs/108xx/doc10868/12-19-Reid_Letter_Managers_Correction_Noted.pdf

4 See letter at http://www.cbo.gov/ftpdocs/113xx/doc11379/AmendReconProp.pdf

Amended Complaint, **Petitioners alleged that, if the House of Representatives passed the Senate Bill, "then the House will be passing a revenue raising bill that ORIGINATED in the Senate and NOT in the House**, in violation" of U.S. Const. Art. I, § 7, cl. 1 (A - 44). Among other relief, Petitioners sought the entry of a judgment "[d]eclaring the Senate Bill, if passed by the House of Representatives and/or signed into law by the President, null and void as passed in violation of" U.S. Const. Art. I, § 7, cl. 1 and "[e]njoining the enforcement and implementation of any resulting health care reform bill that is presented by Congress to the President and is signed by the President" (A - 82).

On July 27, 2010, the District Court, the Honorable Peter J. Messitte presiding, issued an Order denying Petitioners' Motion for Leave to File Second Amended Complaint as to President Obama (A - 37). In an accompanying Memorandum Opinion, Judge Messitte reasoned that the motion for leave to amend should be denied "[s]ince any amendment with regard to President Obama would be futile," concluding that Count III presented non-justiciable, political questions and that the relief sought against the President "is also nonredressable" (A - 35).

On August 10, 2010, while leaving the case open as to Defendant Barack Hussein Obama, Petitioners filed a Notice of Dismissal of Proposed Second Amended Complaint as to the remaining proposed defendants, Nancy Pelosi, Steny Hoyer, and James E. Clyburn, under Rule 41(a)(1) of the Federal Rules of Civil Procedure (A - 191). The District Court, by Order filed August 11, 2010, approved the Notice of Dismissal of Proposed Second Amended Complaint and directed the Clerk of Court to close the case (A - 41).

After giving their Notice of Appeal (A - 135),

Petitioners moved before the **Fourth Circuit** for a **temporary injunction pending resolution of the appeal** and further moved for expedited consideration of the appeal (A - 137). Respondent thereafter made a cross-motion to dismiss the appeal "for lack of Article III standing and for failure to present a substantial federal question." (A - 155). On August 30, 2010, the Fourth Circuit denied Petitioners' motion for a temporary injunction (A - 5). On September 8, 2010, the Fourth Circuit denied Petitioners' motion for expedited appeal, denied Petitioners' motion for reconsideration, and granted the Respondent's motion to dismiss the appeal (A - 6). On September 8, 2010, the Fourth Circuit entered its Judgment dismissing the appeal (A - 7).

REASONS WHY THE PETITION SHOULD BE GRANTED

I. The Fourth Circuit Decided A Novel And Important Question of Federal Law Regarding Respect for and Compliance With The Origination Clause That Should Be Settled By This Court.

In denying Petitioners' motion for a temporary injunction pending appeal and dismissing the appeal itself for failure to present a substantial federal question, the Fourth Circuit rejected Petitioners' Origination Clause challenge to the PPACA. The appeals court thereby decided a novel and important question of federal law regarding respect for and compliance with the Origination Clause. Specifically, **was the Origination Clause violated where the Senate used a non-**

germane, NON-REVENUE-RAISING House bill as a vehicle to pass a revenue-raising Senate measure in an effort to circumvent the Origination Clause's requirement that all bills for the raising of revenue ORIGINATE in the House of Representatives? To paraphrase Justice Douglas, **"[w]hat may not be done directly may not be done indirectly lest the [Origination] Clause become a mockery."** *Cf. School District of Abington Twp. v. Schempp,* 374 U.S. 203, 230 (1963) (Douglas, J., concurring) (Establishment Clause)

The Origination Clause was part of the "Great Compromise" of 1787 and should be respected and enforced and not be reduced to a meaningless admonition, easily circumvented when it is deemed by those currently in power in the nation that their ends are more noble than the Constitution.

The larger conflicts at the Constitutional Convention of 1787 had perhaps hinged less on the question of federal versus state power than on how federal representation was to be apportioned among the states. The delegates solved this baffling issue by deciding that all states would enjoy equal representation in the Senate (a sop to the small states) while representation in the House of Representatives would be based on each state's population (a sop to the large states). This proposal was put forward on July 16, 1787, by Roger Sherman of Connecticut and others and came to be known as the "Connecticut Compromise" or the "Great Compromise." This broke the deadlock, but the Origination Clause was placed in the Constitution to be sure that "all Bills for raising Revenue **shall** originate in the House of Representatives." In order that the people might retain control over the 'purse strings', revenue-raising measures were to originate in the body

apportioned by population.

The limitation "expresses a preference for keeping the taxing power as close as possible to those subject to it . . ."[5] *Baines*, 152 N.H. at 135, 876 A.2d at 779 (quoting Singer, *supra*, at 629). It reflects "a belief that that the branch of government closest to the people 'will be more watchful and cautious in the imposition of taxes' and thus should be the source of those bills." *Bobo v. Kulongoski*, 338 Ore. 111, 107 P.3d 18, 23 (2005) (quoting Joseph Story, *Commentaries on the Constitution of the United States* 341 (1833)).

To permit the Senate Leadership, **aided and abetted by the President and the House leadership**, to trample underfoot at will the Origination Clause's mandate that all revenue- raising bills originate in the House would be to substitute an 'ends justifies the means' standard for the higher Constitutional Standard, and the felling of the Origination Clause, like the felling of a giant sequoia in the national forest would be the 'origination' itself of the undoing of our Constitution, clause by clause (tree by tree) as other clauses (sequoias in the 'National Forest Preserve' of our Constitution) get in the way of this or future administrations, and they similarly tunnel through the sequoia (the clause) causing it to die and be no more.[6]

A. The Senate Bill is One for Raising Revenue.

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5 Not only is the House the larger and more representative branch of Congress, all of its members must stand for re-election every two years, not just one-third as is the case with the Senate. U.S. Const. Art. I, § 2, cl. 1 & Art. I, § 3, cl. 2.

6 The analogy is used because one is reminded of a tunnel cut through the base of a giant sequoia for cars to pass through as an advertising gimmick to promote tourism years ago. The tree subsequently died.

The Origination Clause **mandates** that "[A]LL BILLS FOR *RAISING REVENUE* **SHALL ORGINATE** IN THE HOUSE OF REPRESENTATIVES; BUT THE SENATE MAY PROPOSE OR CONCUR WITH AMENDMENTS AS ON OTHER BILLS." Const., Art. I, § 7, cl. 1 (emphasis added); *see U.S. v. Munoz-Flores*, 495 U.S. 385, 387 (1990). The Senate Bill **originated** in the Senate and is one "for raising Revenue." It raises **BILLIONS OF DOLLARS OF REVENUE** by way of new taxes, fees and penalties, including, but not limited to, higher Medicare payroll taxes on top earners; a tax on high end, "Cadillac" health insurance plans; the imposition of fees on health insurance companies and drug manufacturers; the imposition of an excise tax on medical device manufacturers; levying a tax on tanning salons; and the imposition of tax penalties on corporations and individuals.

More importantly, the Senate Bill imposes these new taxes, fees and penalties, not just for the purpose of covering the cost of the health insurance reforms established by the Act, but also in order to **achieve significant federal deficit reduction**, i.e., to **raise revenue** to meet the overall obligations of the federal Government.

Congress contemplated that the taxes imposed by the PPACA will generate a "substantial excess" of revenue beyond that needed to defray the cost of the health care reform programs established by the Act. Specifically, Congress anticipated that the taxes imposed by the Act will result in an excess of over **$100 BILLION in revenue from 2010 to 2019**, which excess revenue would be **used to** significantly **reduce the federal deficit**. In short, the PPACA has the purpose, not only to finance health care

reform, but also "to raise revenue to be applied in meeting the expenses or obligations of the Government." *See Twin City Nat'l Bank Nebeker*, 167 U.S. 190 at 203.

The PPACA is a "Bill[] for raising Revenue" that was required to **originate** in the House of Representatives by the Origination Clause. After Senator Brown's election in Massachusetts that cost the Administration its filibuster-proof majority in the Senate, the President was forestalled from taking the next step to achieve constitutional compliance in the passage of his obamacare, namely bringing together a joint House-Senate conference committee to hammer out a compromise bill that could pass both houses. The people were speaking out against obamacare, and Massachusetts became the first **STATE** to speak. The Administration panicked. The President summonsed Congressional leadership to the White House, jockeying in and out of his cabinet room, where he met with them attempting a compromise they could not reach themselves (having appointed himself the 'chief legislator'). That having failed, like a king of old summonsing Parliament to the palace under palace guard, he brought Parliament to the palace gatehouse (Blair House) where he lectured them in the public eye. This, too, having failed, the Administration and the House leadership investigated numerous and devious ways around the constitutional mandate of the Origination Clause and sent up numerous trial balloons in the press. Finally, they decided to trample Article I, Section 7 underfoot, running roughshod over the yellow flags that showered down like confetti on the field. The President, grasping his coveted ball (obamacare) with a mailed fist (falsely assuming the ball was still in play) ran like a bull with its head down across the finish line in the House with a revenue raising bill that originated in the

Senate lock, stock and barrel. He had caught the ball on the wrong side of the constitutional foul line.

Thomas Jefferson's prophetic words were thereby made manifest in our time:

> **"I said to [President Washington] that if the equilibrium of the three great bodies, Legislative, Executive and Judiciary, could be preserved, if the Legislature could be kept independent, I should never fear the result of such a government; but that *I could not but be uneasy when I saw that the Executive had swallowed up the Legislative branch.*"**

Thomas Jefferson: The Anas, 1792, ME 1:318 (emphasis added).

B. The PPACA Originated in the Senate.

The Senate leadership attempted to circumvent the Origination Clause's requirement that a revenue-raising bill originate in the House of Representatives by taking up a House bill, H.R. 3590, deleting its text, and substituting by way of a Manager's Amendment the text of the PPACA (2,000+ pages worth). In doing so, the Senate apparently relied on this Court's prior decisions in *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911) and *Rainey v. U.S.*, 232 U.S. 310 (1914).

In *Flint*, the House passed a general bill for the collection of revenue containing an inheritance tax. The Senate deleted the inheritance tax and substituted a corporate tax, and the act was then passed as amended. Rejecting an Origination Clause challenge to the Senate's action, the Supreme Court reasoned that "[t]he bill having properly originated in the House, we perceive no reason in

the constitutional provision relied upon why it may not be amended in the Senate in the manner which it was in this case." 220 U.S. at 143. The Court further reasoned that "[t]he amendment was germane to the subject-matter of the bill, and not beyond the power of the Senate to propose." *Id.* In *Rainey*, the Supreme Court, per Chief Justice White, found unobjectionable the Senate's addition of a revenue amendment to a House-originated bill for raising revenue. 232 U.S. at 317.

This case is readily distinguishable from *Flint* and *Rainey*. In those cases, the House originated a revenue-raising bill, the Senate then exercised its constitutional prerogative to amend the bill, *see* U.S. Const. Art. I, § 7, cl. 1 ("[T]he Senate may propose or concur with Amendments as on other Bills"), and the amended bill was enacted. In this case, by contrast, the **House originated *a non-revenue raising bill***, namely the Service Members Home Ownership Tax Act of 2009; the Senate **substituted a non-germane, revenue-raising bill**, namely the PPACA; and the Senate bill was enacted. The Service Members Home Ownership Tax Act of 2009 is not a bill for raising revenue, since it enacts a program of financial assistance in the form of tax relief for service members and incidentally raises revenue to pay for that program.

The PPACA is a revenue raising bill, since the taxes imposed by that bill were purposely designed to generate a substantial excess of revenue over and above that needed to finance the health care reform programs established by that bill, specifically an excess of over $100 billion over a ten-year period, to be used for federal deficit reduction purposes. Furthermore, the PPACA is not at all germane to the subject matter of the House bill, which did not concern in any sense of the word either 'health care reform' or federal deficit reduction.

By substituting the PPACA for the Service Members Home Ownership Act of 2009, the **Senate** did not simply amend a House-originated revenue-raising bill as in *Flint* and *Rainey*, but itself **improperly originated a revenue-raising bill in violation of the Origination Clause**. This **constitutional** violation was thereafter **rendered complete** by the actions of the House in passing, and the **President in signing, the Senate-originated revenue-raising bill.**

C. The Claim Is Justiciable And Redressable.

As this Court held in *.S. v. Munoz-Flores*, 495 U.S. 385 (1990), an Origination Clause "has none of the characteristics that *Baker v. Carr* [, 369 U.S. 186 (1962)] identified as essential to a finding that a case raises a political question. *It is therefore justiciable*." 495 U.S. at 396 (emphasis added). Judge Messitte's ruling to the contrary fatally conflicts with this Court's holding in *Munoz-Flores*.

As for redressability, Judge Messitte failed to consider that "numerous subordinate executive officials engage[] in the continued operation and enforcement of [the challenged Obamacare legislation's] provisions." *See Made in the USA Found. v. U.S.*, 242 F.3d 1300, 1310 (11th Cir.), *cert. denied*, 534 U.S. 1039 (2001). Thus, "even short of directly ordering the President to terminate [implementation and enforcement of the PPACA], [the ability to issue] a judicial order instructing the subordinate executive officials to cease their compliance with its provisions [will] suffice for standing purposes." *See id.* at 1310-1311. That the proposed Second Amended Complaint does not "identify subordinate [executive] officials who could be enjoined, as well as specific pro-

visions [of the PPACA] that such officials should cease to implement in order to redress [the Petitioners'] injuries . . . does not preclude a finding of redressability." *Id.* at 1311 n. 25. This Court has held that a court has power under the All Writs Act, 28 U.S.C. § 1651(a), to issue commands that apply to "persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice." *U.S. v. New York Tel. Co.*, 434 U.S. 159, 172-174 (1977); *see Made in the USA*, 242 F.3d at 1311 n. 25.

In short, the redressability requirement for standing is fully satisfied by a federal court's ability to issue injunctive relief against subordinate executive officials to halt the enforcement and implementation of the PPACA.

D. The Claim Presents A Substantial Federal Question.

This Court has held that a federal question is insubstantial only if "it is obviously without merit or its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy." *Ex Parte Poresky*, 290 U.S. 30, 32 (1933). Claims are constitutionally insubstantial "only if the prior decisions inescapably render the claims frivolous; previous decisions that merely render claims of doubtful or questionable merit do not render them insubstantial[.]" *Goosby v. Osser*, 409 U.S. 512, 518 (1973). Thus, "[a] case should be dismissed for want of a substantial federal question only when the federal issue is '(1) wholly insub-

stantial or obviously frivolous, (2) foreclosed by prior cases which have settled the issue one way or another, or (3) so patently without merit as to require no meaningful consideration.'" *Nicodemus v. Union Pac. Corp.*, 440 F.3d 1227, 1236 (10th Cir. 2006) (quoting *Wiley v. NCAA*, 612 F.2d 473, 477 (10th Cir. 1979), *cert. denied*, 446 U.S. 943 (1980)).

E. Summary: The Origination Clause Should Be Given "Teeth".

The Court should grant the Petition to prevent the President from abusing his leadership to render insignificant the Constitution's Origination Clause by the use of an irrelevant non-revenue-raising House bill as a vehicle for passing a 100 billion dollar revenue-raising measure which **originated** solely in the Senate.

Review by this Court is necessary to give the Origination Clause "teeth", *id.* ("If the origination clause is to have any vitality, if . . . it is truly to 'safeguard liberty,' . . . it must have teeth[.]") (quoting *Munoz-Flores*, 495 U.S. at 395), and thereby restore the people's grip on the Nation's purse strings.

The Court should also grant the Petition to reaffirm that Origination Clause challenges are justiciable and to clarify that such a claim brought against the President is redressable by issuing appropriate injunctive relief against subordinate executive officials pursuant to the All Writs Act, 28 U.S.C. § 1651(a).

The Court should enter up a temporary injunction enjoining any further implementation or enforcement of PPACA pending final adjudication so as to forestall further implementation of this complex and mammoth law, any subsequent 'reverse implementation' of which this President would assuredly blame on the court finding some way to say that the Court should have acted sooner.

The Court may wish to use the instant case as the 'vehicle' to enter up injunctive relief, as **TIME IS OF THE ESSENCE,** and later consolidate argument in this case with other cases working their way to the Court. It is respectfully proffered that it would be better to 'stop the music' during the overture, while the people are still taking their seats, than to allow something lacking bipartisan harmony to begin with cymbals clanging like a bull in a china shop. The intended symphony needs to be newly scored on a clean sheet of paper by the new Congress.

The instant case is the first to have been filed because it is predicated upon the manner in which the President transgressed constitutional mandate in order to procure passage of his law. The cases of the state Attorney Generals only beginning now to work their way to the Court are predicated upon an ordinary challenge to the constitutionality of a law once passed and, therefore, could not be and were not filed until after the bill was signed into law by the President. Further, they seem to be based primarily upon Ninth and Tenth Amendment arguments whereas the Origination Clause argument of the instant case is based upon this current Chief Executive's willful transgression of the Constitution's Article I, Section 7 and his usurpation of the powers of the legislature to procure his own will.

The Court should grant the Petition to reverse, as

erroneous and/or an abuse of discretion, the Fourth Circuit's dismissal of Petitioners' appeal for failure to present a substantial federal question and remand the case to the appeals court for further proceedings, after entry of the Court's own temporary injunction.

II. The Fourth Circuit Decided Novel And Important Questions Of Federal Law Regarding The Standing Of Taxpayers, Physicians, And Pre-Med College Graduates To Challenge The PPACA.

To the extent the Fourth Circuit dismissed Petitioners' appeal for lack of Article III standing, the appeals court decided important federal questions of law regarding the standing of federal taxpayers, doctors, and pre-med college graduates to challenge the PPACA as violating the Origination Clause, questions that have not been but should be resolved by the Court.

Jennifer Boyer, a bright young graduate of the University of Kentucky, admitted to the medical school by the same name, put her plans on hold while awaiting outcome of the health care debate in the Congress. Following passage of obamacare as promulgated, she has suspended her plans to enter medical school pending the outcome of constitutional challenges to the law. (A-52, A-106) affidavit of Jennifer Boyer which was originally appended to Plaintiffs' Proposed Second Amended Complaint). Her story is consonant with the story of innumerable others – the brightest and best who formerly chose medicine as a career.

To establish the "irreducible constitutional minimum of standing," Petitioners "must have suffered an 'injury in fact' – an invasion of a legally-protected interest

which is (a) concrete and particularized[7] . . . and (b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560-561. The alleged injury also must be traceable to the actions of which the Petitioners complain, and it must be "likely" that a favorable decision would redress it. *Id.*

A. Petitioner-Physicians Have Standing To Protect The Patient-Physician Relationship And Avoid Deficient Care For Their Patients.

Petitioners are well-known physicians (both nationally and locally). Each works in a professional setting and deals with Health Care decisions on a minute-by-minute basis. The Health Care legislation proposed by Respondent will damage Petitioners' medical profession by adversely altering the physician-patient relationship.

If the manner of passage of this law is upheld, Petitioners will be exposed to the blight of socialized medicine. The inherent risk of being a party to socialized medicine programs will eliminate the sacred binding of dedicated physician and sick patient. Eliminated will be the two 'inalienable' rights inherent in medical care since the time of Hippocrates: 1) the right of the patient to **choose** the **doctor** and 2) the right of the doctor to **choose** the **treatment** for the patient.

There will be a lack of incentives to go into medicine and the brightest and the best of American youth that formerly did so will choose a different career. The increase in government directives and interventions will increase the number of doctor retirees. Patient

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7 An injury is "particularized" if it affects the plaintiff in "a personal and individual way." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).

medical decisions will become impersonal and will be frequently made by non-medical personnel. Petitioners will be further injured through the commandeering of their occupation by civil technocrats who will carry out the federal policy set forth by Respondents and depriving the Petitioners of their power to make the determination as to what type of treatment is best for their patients. Petitioners as protectors of the medical profession have a right to see that these injuries will not occur. (A-46, A-87, A-92) affidavit of Dr. Richard P. Delaney).

Standing is not to be denied simply because many people suffer the same injury. As the Court explained in *FEC v. Akins*, 524 U.S., 11, 24 (1998), injury-in-fact may be found although the asserted harm is "widely shared" if the harm is sufficiently concrete and particularized. Here, there is no question that Petitioners allege a discrete, individual risk of personal harm from the passing of this particular piece of Health Care legislation and base their claim of standing on more than a generalized concern that the Respondent obeys the law, i.e., separation of powers (wall of separation between executive and legislative branches of government) and follow the Constitution (Article I, Section 7).

The practice of medicine will be altered. Physicians are cautioned by the President's health care advisor, Dr. Ezekiel Emmanuel to accept rather than resist the changes in the practice of medicine. Dr. Emmanuel's writings could give one the impression that he may have had a substantial role in generating the PPACA.

In summary, Petitioner-Physicians have standing to challenge the constitutionality of the PPACA because that act will (1) irreparably impair the doctor-patient relationship between these physicians and their patients, and

(2) force these physicians to practice medicine in a deficient manner.

The doctor-patient relationship has been described as "a unique fiduciary-like relationship that exists between doctor and patient." *See Carhart v. Stenberg*, 972 F. Supp. 507, 521 (D. Neb. 1997); *see also Corcoran v. United Healthcare, Inc.*, 965 F.2d 1321, 1338 (9th Cir.) ("courts regularly view doctors and their patients as standing in a fiduciary relationship"), *cert. denied*, 506 U.S. 1033 (1992). The relationship is based on the "personal trust" that the patient has in his or her doctor. This element of "trust . . . is essential to the doctor-patient relationship." *Washington v. Glucksberg*, 521 U.S. 702, 731 (1997). It is this "personal trust" that encourages the patient to candidly and fully inform and confide in the doctor, so that he or she can identify and treat the patient's disease or condition. *See Trammel v. United States*, 445 U.S. 40, 51 (1980) (the doctor-patient privilege reflects "the imperative need for confidence and trust" inherent in the doctor-patient relationship and recognizes that "a physician must know all that a patient can articulate in order to identify and to treat disease; barriers to full disclosure would impair diagnosis and treatment").

The Act "encourages the use of new structures such as [patient-centered] medical homes," and "discourages traditional independent forms of practice," such as those engaged in by petitioner-physicians, *see* Jane M. Orient, M.D., "'Obamacare': What Is in It," 15 *Journal of Am. Phys. & Surgeons* 87, 88 (Fall 2010), thereby undermining the personal nature of the doctor-patient relationship and hence the confidence and trust that the patient reposes in the doctor.

That the PPACA is designed and intended to

transform the provision of medical services to a more impersonal, aggregated system, where patients will be dealing with physicians who are employees of hospitals or members of large organizations, instead of independent medical practitioners, can be seen from a recent article authored by Ezekiel J. Emanuel, MD, Special Advisor on Health Policy, Office of Management and Budget, and Nancy Ann M. DeParle, JD, Director of the White House Office of Health Reform, together with Robert Kocher, MD. *See* R. Kocher, E. Emanuel, and N. DeParle, "The Affordable Care Act and the Future of Clinical Medicine," *Annals of Internal Medicine* (Aug. 23, 2010), http://www.annals.org/content/early/2010/08/ 23/0003-4819-153-8-201010190-00274.1.full.

> In this article, the authors candidly state that To realize the full benefits of the Affordable Care Act, physicians will need to embrace rather than resist **change**. *The economic forces put in motion by the Act are likely to lead to vertical organization of providers and accelerate physician employment by hospitals and aggregation into larger physician groups.*

Id., Abstract (emphasis added); *see also id.*, Full Text ("These reforms will unleash forces that favor integration across the continuum of care. . . . Consequently, the health care system will evolve into 1 of 2 forms: organized around hospitals or organized around physician groups.").

In short, individual medical practitioners, such as the physician-petitioners, will either be driven into retirement or out of business, or they will be forced to "organize themselves into increasing[ly] larger groups--patient-centered medical home practices and accountable care organizations," Kocher, Emanuel, & DeParle, Full

Text, thereby impersonalizing and irreparably damaging and undermining the doctor-patient relationship between petitioners and their patients. Again, this is by design.

That sacred relationship between doctor and patient, that unique and personal expression of our liberty – and we are talking about liberty here – stands now in peril. Our Constitution has been hammered out of shape to pass a feared and hated law that will forever destroy what it means to be a doctor and what it means to be a patient. While Congress was in summer recess, the President, fully aware of the unpopularity of his new law, appointed a czar to be the dominating influence directing American Medicine. Dr. Donald Berwick is a man whose opinions the President could not trust to stand the light of day. That is to say, he could not stand the light of Congressional review of his appointment.

Dr. Donald Berwick openly lauds and favors the United Kingdom's socialized system of medicine. It is a system that has famously and expensively failed the sick of England. He has not our liberty in mind when he states: "I cannot believe that the individual *health care consumer* [that is we, the patient] can enforce through choice [i.e., our liberty] the proper configuration of ... health care. That's for *leaders to do*" (meaning, of course, himself, Emanuel, Obama, etc.)[8] Again, he disdains liberty in demanding politically motivated rationing of services and medications. "You cap your health care budget and you make the political and economic choices you need ..."[9] Read: "The government will cap...,and the government will make choices."

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8 See article entitled "Berwick: Bigger Than Kagan" by Daniel Henninger, July 15, 2010, Wall Street Journal; http://online.wsj.com/article/SB10001424052748703792704575367020548324914.html

9 Ibid.

Quoting the President's back-door appointment of a man who mirrors his own views on how the sick should be cared for – or neglected – could go on but the point is made. His views are known. He requires shielding from official scrutiny of senatorial review. Mr. Obama, in his haste to establish big government, is unfairly attacking the profession that Physician-Petitioners have lived and loved. That is a disgrace because American Medicine has worked well for the sick in our land.

Young, bright and committed future doctors see no attraction to socialized medicine. The prospect of what Mr. Obama means health care to be is so utterly alien to their calling that they will choose other paths, thus denying our society of the brightest and the best. Obamacare is not concerned with the sick nor with their doctors who might have attended them. It is caught up with denying needed services and capping medical budgets while driving the nation's deficit to unprecedented trillions.

The physician assumes a profound responsibility in entering into that pact wherein the patient places such trust in his hands. It is a matter of moral concern how much of that responsibility the doctor may delegate to a third party, be it an insurance company or a politician.

With this political takeover of the means to treat the halt and the lame; this shortcut to the concentration of political **POWER** in our land, we seem to see assaulting the cradle of liberty a venomous snake. The viper has a name: Its name is **POWER.**

POWER does not come alone, for his twin, **OPPRESSION**, is soon at his side. Call to mind the means of passage of this dreadful law; **the midnight Christmas Even session**; the locked doors; the bullied legislators; the unreadable and unread twenty-seven

hundred pages and the trampling of our Constitution. Remember, too, that not the slightest part of it involved a bipartisan vote. **LIBERTY SHOULD BE OF NOBLER STUFF.**

Dr. Donald Berwick, the newly appointed Administrator of the Center for Medicare & Medicaid Services (CMS), curiously chooses to change the very language (and language and words are always important, being the symbols by which we dissect reality) of medical care by substituting for the heretofore used word "Patient" his preferred term **"health care consumer"** and substituting for the heretofore used word "Doctor" his preferred word **"health care provider"**. As "consumers" we know what we often hear when we go to the store to purchase a product.

Dr. Berwick reveals in a book co-authored by him in 1996, that he regards the doctor-patient relationship as obsolete and dispensable:

> "Health care has become a true industry, with numerous loci of authority well beyond the doctor's office. The care of the patient is increasingly understood to depend on the precise functioning of a complicated organization. Though the physician still acts as the patient's advocate, practitioners are more and more economically integrated into the structure of health care, either as employees, as members of physician-hospital organizations, or as participants in managed care plans. *In many ways, the relationship of the patient to the doctor is of less importance* than is the role of the patient as consumer in a health care system. . . . *[T]raditional medical ethics, based on the doctor-patient dyad, must be reformulated to fit the new mold of the delivery of health care. The roles of physician and*

their patients change with the changes in structure and financing."

T. Brennan & D. Berwick, *New Rules: Regulation, Markets, and the Quality of American Health Care,* pp. 6-7 (Jossey Bass 1995) (emphasis added).

In addition to impersonalizing and thereby undermining the doctor-patient relationship by reducing the trust and confidence that a patient has in his or her doctor, the PPACA further intrudes into that relationship by **"MAK[ING] STATUTORY CHANGES THAT COULD CHALLENGE THE AUTONOMY OF PHYSICIANS TO TREAT PATIENTS AS THEY THINK BEST."** C. DiGiovanni, M.D. and R. Moffitt, Ph. D., "How Obamacare Empowers the Medicare Bureaucracy: What Seniors and Their Doctors Should Know," (The Heritage Found. Aug. 24, 2010), http://www.heritage.org/research/reports/2010/08/how-obamacare-empowers-the-medicare-bureaucracy-what-seniors-and-their-doctors-should-know. For example, § 6301 of the PPACA creates a Patient-Centered Outcomes Research Institute that will study the comparative effectiveness of medical and surgical treatments. PPACA, § 6301(a) [Sec. 1181], 124 Stat. 727-738. Section 6301 further authorizes the Secretary of HHS to use the findings of this comparative effectiveness research in determining coverage and physician reimbursement. PPACA, § 6301(c) [Sec. 1182(c)(2) & (d)(2)(A)(ii)], 124 Stat. 740-741. **This will in turn coerce physicians into providing standardized patient care instead of allowing doctors to prescribe what they think is best for each INDIVIDUAL patient.** *See* DiGiovanni & Moffitt **("Doctors will be coerced into standardizing**

patient care."). By coercing a doctor into prescribing treatment and care that he does not think is best for each individual patient, **the PPACA threatens to "impinge upon the doctor-patient relationship" in violation of the First Amendment.** *See Rust v. Sullivan*, 500 U.S. 173, 200 (1991).

Aside from harming the doctor-patient relationship, the PPACA, once it is fully implemented, will prevent Petitioners and other physicians from practicing medicine in a safe and effective manner, i.e., it will force them to practice medicine "deficiently," by requiring them to subject their patients to increased medical risk -- by, for example, subjecting their patients to long waiting periods for treatment and care due to a shortage of doctors, and by regulating and restricting the kinds of treatments and remedies that a doctor may administer and prescribe to his or her patients -- thereby giving petitioner physicians "a strong personal stake in the argument." *See Carhart v. Stenberg*, 972 F. Supp. at 520-521.

Furthermore, according to a survey of 1,195 physicians conducted in January 2010, by a national physician search firm, Medicus, nearly **one-third of these physicians indicated that they will want to leave medical practice after health reform is implemented.**[10] (An injunction by this Court will forestall this. It is hard to get doctors back once they have left.) Moreover, of the 25 percent of respondents who were **primary care physicians** (defined as internal medicine and family medicine), **46 percent indicated that they would leave medicine** -- or try to leave medicine -- as a

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10 Andrea Santiago, "The Medicus Firm Physician Survey: Health Reform May Lead to Significant Reduction in Physician Workforce," MEDICUS FIRM, Jan. 2010, http://www.themedicusfirm.com/pages/medicus-media-survey-reveals-impact-health-reform.

result of health reform.[11]

The above described harms to the doctor-patient relationship and the quality of care that can be provided to patients are both concrete and particularized, as they would directly affect each of the petitioner physicians in their practice of medicine, and would implicate interests that are not common to the entire public. As these harms are also fairly traceable to the enactment of the PPACA and would be redressed by its invalidation, the petitioner-physicians have standing to challenge the validity of the PPACA under the Origination Clause.

B. The Proposed Additional Plaintiff, A Pre-Med Graduate, Has Standing Where Obamacare Has Caused Her to No Longer Care About Her Dream of Becoming a Physician, She Having Put Her Plans on Hold.

The proposed additional plaintiff, Jennifer Boyer, a pre-med college graduate, had plans to attend medical school and become a doctor, but, although she had received an offer of admittance to medical school in the spring of 2009, she deferred acceptance and put her plans on hold due to the introduction, consideration and passage of the PPACA, which she views as foreclosing her desired career path as an autonomous, independent medical practitioner. Unless the PPACA is invalidated or repealed, it is highly unlikely that she will ever become a doctor, as she has no desire to become either "a name on a list of providers" of "allowed services on government-funded health insurance plans" or a "subordinate [, i.e., an employee]" (A-52, A-106). Thus, Ms. Boyer has standing, as she has a direct stake in the outcome of this case,

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11 *Id.*

which will determine whether or not she will pursue a career as a doctor. The harm to her desired career path is concrete and particularized, is fairly traceable to the PPACA, and can be fully remedied by the invalidation of that legislation, causing Congress to start over with a blank sheet of paper, seeking this time bipartisan agreement after the mid-term elections.

C. Petitioners Have Taxpayer Standing Under *Flast v. Cohen*.

The allegations of the proposed Second Amended Complaint, as well as affidavits filed with the Fourth Circuit, establish that Petitioners are federal taxpayers who will be subject to at least some of the new taxes levied by the PPACA (A-46, A-49, A-52). In addition, as federal taxpayers, Petitioners will be subject to any additional federal taxes that will be needed in the not unlikely event that the PPACA leads to massive additional deficits.[12] Petitioners, moreover, have a legally cognizable injury under the test for federal taxpayer standing set forth in *Flast v. Cohen*, 392 U.S. 83 (1968). The PPACA levies **billions** of dollars in additional taxes and then appropriates this tax revenue for the purpose of financing health care reform programs and to **reduce the federal deficit**. The legislation, once fully implemented, will likely increase the amount of federal taxes that each

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12 It has been estimated that the PPACA will increase deficits by approximately **half a trillion dollars.** Shawn Tully, "Health care: Going from Broken to Broke," Fortune, 03/12/2010, http://money.cnn.com/2010/03/12/news/economy/debt_health_care.fortune/index.htm (estimating that the PPACA will increase deficits by $488 billion); Douglas Holtz-Eakin, Opinion, "The Real Arithmetic of Health Reform," N.Y. Times, 03/20/2010, http://www.nytimes.com/2010/03/21/opinion/21holtz-eakin.html (former CBO Director estimates PPACA will increase deficits by $562 billion).

Petitioner will be required to pay in future years. Second, Petitioners can demonstrate a nexus between their taxpayer status and the claimed constitutional infringement, i.e., the violation of the Origination Clause of Article I, Section 7, since the purpose of the Origination Clause was to act as a "specific constitutional limitation" or check on Congress' power to tax and spend by ensuring that any revenue-raising bill originate in the more representative body of Congress, namely the House of Representatives, rather than in the Senate.

D. Summary

The Court should therefore grant certiorari to resolve the novel and important questions involved and enter up an order temporarily enjoining further enforcement or implementation of the PPACA pending final adjudication in this Court.

The Court should reverse the Fourth Circuit's dismissal of Petitioners' appeal on the grounds of lack of Article III standing, and either address the merits of Petitioner's Origination Clause challenge or remand to the Fourth Circuit for further proceedings.

CONCLUSION

In view of the arguments made and authorities cited above, Petitioners respectfully request that the Court grant the Petition and issue a writ of certiorari to the Fourth Circuit Court of Appeals and enter up a **temporary and/or permanent injunction** against the continued implementation and enforcement of the PPACA, and either (a) reverse the judgment of the lower courts and remand with instructions that the District

Court grant Plaintiff-Petitioners' motion for leave to file second amended complaint and/or (b) reverse the Fourth Circuit's judgment dismissing the Petitioners appeal and remand the matter to the Fourth Circuit for further proceedings.

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